
OPINION OF THE PUBLIC ACCESS COUNSELOR

KARA KENNEY,
Complainant,

v.

PERRY TOWNSHIP SCHOOLS,
Respondent.

Formal Complaint No.
18-FC-38

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that Perry Township Schools (“School”) violated the Access to Public Records Act¹ (“APRA”). The school district responded to the complaint through attorney Liberty L. Roberts. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code §§ 5-14-3-1 to -10

by the Office of the Public Access Counselor on February 22, 2018.

BACKGROUND

Kara Kenney (“Complainant”), a reporter with WRTV-6, filed a formal complaint alleging Perry Township Schools (“School”) violated the Access to Public Records Act (“APRA”) by failing to provide copies of paychecks.

On January 23, 2018, Kenney submitted a request to Keesha Hughes, the Marketing and Communications Director for the school district, for “any documents showing the compensation Dr. Thomas Little received from Perry Schools from May 8, 2017 until the date this request is filled.” The School responded in an email on January 29, stating “Perry Township Schools provided final and complete compensation to Dr. Thomas Little in the amount of \$325,000.” Kenney responded on the same day to clarify that she was requesting the “documents associated with this compensation including the severance agreement, if any, and any checks or payments issued to Dr. Little.” The School responded on February 1 by providing the agreement between the School and Dr. Little, which the School described as “evidencing final and complete compensation.” Kenney responded on the same day stating that the response did not fulfill their request for checks and compensation, and stated that the agreement “only shows what the district planned to give Dr. Little, not what was actually paid out by the district.”

The School responded to this request on February 1 by providing a copy of a written release agreement signed and dated on December 5, 2017, by Dr. Little. This agreement included provisions describing the payments to be made to Dr. Little after the release agreement took effect--- one payment of \$125,000 to be issued within twenty-one days, two payments for general damages in the amounts of \$19,500 and \$5,000 to be issued within twenty-one days, and finally a \$200,000 payment to be issued between January 1 and January 30, 2018. The Complainant responded to this on the same day by again explaining that the agreement described what the School planned to pay Dr. Little, not what the School actually paid Dr. Little, and therefore the response did not fully fulfill her request for checks and compensation.

On February 2, the School responded with three pages of documents from the School's payroll department. The first page lists two payments: a payment of \$35,304.75 for unused vacation and personal days as well as the first payment of \$125,000 as described in the settlement agreement. The second page indicates that the School paid the second payment of \$200,000 as described in the settlement agreement to Dr. Little on January 5, 2018. Finally, the third page resembles an online paycheck warrant and provides more detail of the payout for unused vacation and personal details.

Kenney filed her complaint with this Office on February 22, stating that instead of receiving actual copies of checks provided to Dr. Little, she instead received "what appears to be a document created by the payroll department."

This Office notified the School of the complaint on February 28, 2018, and received its response on March 21, 2018. In

the response, the School explains that paychecks are electronic, and therefore there are no traditional paper copies of paychecks maintained in School offices. Furthermore, the School asserts that the fundamental issue of the complaint is that the School has provided the compensation information requested by Kenney, just not in the format the she wanted.

ANALYSIS

This formal complaint presents an issue of whether Perry Township Schools (“School”) are obligated to provide actual copies of paychecks in response to a request for compensation.

1. The Access to Public Records Act (“APRA”)

APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The School is a public agency for purposes of APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the School’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

1.1 Personnel Files and Compensation

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency’s disclosable public records. Ind. Code § 5-14-3-3(a).

A noteworthy exception to the rule of disclosure under APRA is the exception for the personnel files of public employees and files of applicants for public employment. In truth, APRA provides public agencies with the *discretion* to withhold these records from public disclosure. Ind. Code § 5-14-3-4(b)(8) (emphasis added).

Yet, solidly embedded in the discretionary exception for personnel files of employees and applicants is an exception—to the exception—that provides the following:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

In effect, a public agency has discretion to withhold personnel records but lacks discretion to withhold the information set forth in subsections (A), (B), and (C). That means, upon a proper request, a public agency must disclose the compensation of an employee.

1.1 Paychecks as a Part of the Personnel File

The School argues that paychecks are a part of a personnel file. The School references *Opinion of the Public Access Counselor*, 13-FC-339 (2013), in which I discussed what could be

considered a part of an employee's personnel file. In that Opinion, I stated "there must be a reasonable basis to correlate the public record to a personnel file." The School argues that there is a reasonable basis to include paychecks as part of the personnel file because "paychecks are documents an employer would need to maintain to show proper payments, proper withholdings, and an accounting of benefits paid."

I recently addressed this issue in *Opinion of the Public Access Counselor*, 18-FC-24 (2018), which dealt with a very similar question of whether new records could be created to show compensation, stating:

I [have] noted that much of the information in Ind. Code § 5-14-3-8(a) can be summarized and a new document created for the purposes of disclosure of that information. Much of that information is static and would not change.

In the instant case, however, compensation is very much an issue of public curiosity. . . . In cases where compensation may deviate for reasons including, but not limited to, reassignment, leaves of absence, administrative leave, etc., other documents should be provided in order to verify consistency or demonstrate fluctuation.

Similar to timesheets, pay stubs or salary warrants are not typically a part of a personnel file, but are almost always contained in a finance or payroll file which is mutually exclusive from a personnel file. This office has long advised those materials are disclosable minus any confidential information which can be redacted. The Complainant asked for less than six months' worth of those materials so it is not a matter of a lack of

specificity. To the extent possible, records reflecting pay on a more granular level should be disclosed.

Again, many of the items listed in statute for mandatory disclosure can be summarized for practical purposes. And to an extent, so too can compensation. If it deviates in any way from that summary, or if it shows fluctuation in a consistent amount paid, an agency shall take steps to provide documentation to verify actual amount paid. Notably, the statute does not qualify “compensation” as hourly, salary, weekly, monthly, annually or the amount set by contract. Therefore it stands to reason that an actual warrant, paystub, check or deposit slip (or a document by any other name serving the same function) would be the way to verify the actual amount paid.

Sensitive information such as home addresses, routing numbers, social security numbers and the like may be redacted, but if the school has a document reflecting amounts different – or in addition to – the summaries already provided, it should be released.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that Perry Township Schools, to fully fulfill its statutory obligations, should provide more detailed records to the Complainant *if* they exist and *if* they are different than the payroll summaries already provided.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor